

(c) *Designation of commercial information.* Submitters of commercial information shall use good-faith efforts to designate, by appropriate markings, either at the time of submission or within a reasonable time thereafter, those portions of their submissions which they deem to be protected from disclosure under 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part. Such designations shall be deemed to have expired ten years after the date of the submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) *Notice to submitters.* The NSF shall, to the extent permitted by law, provide a submitter with written notice of a Freedom of Information Act request or administrative appeal encompassing its commercial information wherever required under paragraph (e) of this section, except as provided for in paragraph (f) of this section. Such written notice, given in order to afford the submitter an opportunity to object to disclosure pursuant to paragraph (g) of this section, shall be given within a reasonable time after NSF's receipt of the Freedom of Information Act request or administrative appeal, consistent with statutory requirements, and shall either describe the exact nature of the commercial information requested or provide copies of the records or portions thereof containing the information. The requester also shall be notified that notice and an opportunity to object are being provided to a submitter.

(e) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The information has been designated in good faith by the submitter as information deemed protected from disclosure under 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part, or

(2) The NSF has reason to believe that the information may be protected from disclosure under 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part.

(f) *Exceptions to notice requirements.* The notice requirements of paragraph (d) of this section shall not apply if:

(1) The NSF determines that the information should not be disclosed;

(2) The information lawfully has been published or has been officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552); or

(4) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous, except that, in such case, the NSF shall send to the submitter written notice of any final administrative decision to disclose commercial information at least ten days prior to a specified disclosure date.

(g) *Opportunity to object to disclosure.* Through the notice described in paragraph (d) of this section, the NSF shall afford a submitter a reasonable time, consistent with statutory requirements, within which to provide the NSF with a detailed written statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of 5 U.S.C. 552(b)(4) and §612.8(a)(4) of this part, shall provide a detailed description of why the information is a trade secret or commercial or financial information that is privileged or confidential. This description shall explain why release of commercial or financial information would cause substantial harm to the competitive position of the submitter. Whenever possible, the submitter's claim of confidentiality should be supported by a statement or certification by an officer or authorized representative of the submitter. Information provided by a submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA. When the submitter fails to object within the specified time or the objection appears obviously frivolous, the NSF shall provide the submitter with written notice pursuant to paragraph (f)(4) of this section.

(h) *Notice of intent to disclose.* The NSF shall consider a submitter's objections and specific grounds for non-disclosure prior to determining whether to disclose confidential information. Whenever the Foundation decides to disclose confidential information over the objection of a submitter, the NSF shall forward to the submitter a written notice which shall include: